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UNITED STATES OF AMERICA

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1947

No. 1077

WILLIAM GRANADY,

*Petitioner,*

vs.

DETROIT STEEL STEEL WORKS, a Michigan corporation,

*Respondent.*

# PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF


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Chronicle Brief & Record Co., 121 Woodward Ave., Detroit

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MISCELLANEOUS

UNITED STATES OF AMERICA

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# Supreme Court of the United States

..... Term, 1947

No. .....

WILLIAM CHANADY,

*Petitioner,*

vs.

DETROIT SHEET STEEL WORKS, a Michigan corporation,

*Respondent.*

# PETITION FOR WRIT OF CERTIORARI

*TO the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioner respectfully shows:

## SUMMARY STATEMENT OF MATTER INVOLVED

(Figures in parentheses refer to pages of the printed record, except as the context clearly indicates otherwise.)

The question presented in this case involves the definition of "executive," as such definition is promulgated by the Wage and Hour Administrator, under the exempting provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060; Title 29 U.S.C., Sec. 201, et seq).

**Purpose of the Act**

"* * * * The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon low wages and long hours of service and industry. * * *"

*Fleming vs. Hawkeye* - 113 F. 2d 52, p. 56.

**Prima Facie Coverage and Exemptions Under the Act**

Sections 6 and 7 of said Act provide for compensation of laborers at the rate of time and a half for all time in excess of 40 hours per week:

> "No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in production of goods for commerce - -
>
> > for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."
>
> *Fair Labor Standards Act, Sec.* 7 (a) (3).

Prima facie a laborer is entitled to compensation as provided in the foregoing section of the Act unless he is a bona fide executive and thereby excluded from the protection of the Act as provided therein:

> "The provisions of Sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator);"
>
> *Fair Labor Standards Act*, Sec. 13 (a) (1).

The Wage and Hour Administrator, pursuant to Sec. 13 (a) (1) above, defined the term "employee employed in a bona fide executive * * * capacity" by enumerating six conditions which, if existing in the conjunctive, classify an employee as an executive, thereby excluding him from the benefits of the Act.

SECTION 541.1 — EXECUTIVE.

The term "employee employed in a bona fide executive * * * capacity" in section 13 (a) (1) of the act shall mean any employee —

(A) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(B) who customarily and regularly directs the work of other employees therein, and

(C) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

(D) who customarily and regularly exercises discretionary powers, and

(E) who is compensated for his services on a salary basis at not less than $30 per week (exclusive of board, lodging, or other facilities), and

(F) whose hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the number of hours worked in the workweek by the nonexempt employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

(5 F.R. 4077)

### Petitioner's Claim

Petitioner claims that because he was an employee working exclusively at manual labor, having no voice in business policy or management, the definition of the Administrator does not exclude him from the benefits of the Act under subsections (A), (B), (C), (D) and (F) of the Administrator's Regulations above.

### Summary of Evidence

Petitioner filed this suit in the District Court for the Eastern District of Michigan, Southern Division, to recover overtime compensation for an excess of 32 hours per week over and above regular time of 40 hours per week, from October 13, 1944, to May 12, 1945. (14) During this period the defendant corporation was fulfilling a contract with the United States Government for the manufacture of war materials, one phase of such production being the painting of ammunition carriers. (14) The defendant did not have space or painting equipment in its main plant for this operation, and accordingly set up a paint shop in a garage nine miles distant from the main plant (19) and operated under the defendants corporate name. (34)

Petitioner's duties required him to see that the paint shop operated in a proper and efficient manner, to use his own judgment and discretion as to which of his helpers should work on any particular piece of work, how many hours each of his helpers should work, and to route the work every day, and customarily directed the work of the men hired to work in the paint shop. (20)

Petitioner looked after everything for the successful operation of the paint shop, such as keeping materials on hand,

(such materials having been obtained through defendant's purchasing agent at the main plant). His testimony that he worked at manual labor one hundred per cent of the time (34) was uncontroverted. (60) His manual labor consisted of spraying, cleaning, painting, taking off ovens, placing stock on the line, and removing stock from the line, loading trucks, unloading trucks, (52) handing-washing the parts with solvent, (37) cleaning the spray booth, working on the bonderizing tank, cleaning up the shop, unloading paint, (54) lifting sections weighing 150 pounds onto a carrier to paint them, taking them off the carrier by hand for storage, and pouring paint out of barrels into the tank. (56)

The defendant, not the petitioner, hired the full-time employees in the paint shop, while petitioner hired and made the rate of pay for the part-time employees only. (20 & 34) The largest number of part-time employees working in the paint shop with petitioner at any one time was four; the largest number of full-time men at any time was two; the largest number working at any one time was five. (34)

Petitioner worked alone at times, (37) and frequently until 10 or 11 o'clock at night to meet a production schedule. (32 & 33)

The government contract was terminated on May 12, 1945, and the garage paint shop dismantled during the following summer. (24)

### Findings of District Court

The trial court made findings of fact that the paint shop was a physically separated branch establishment of the defendant and that petitioner was in sole charge thereof (8) (58) (59), and made findings of law that the petitioner was an executive because he was in sole charge of all activities of

a physically separated branch establishment of the defendant corporation, that he supervised all activities carried on at such establishment, that every employee of such establishment was under his supervision, that his primary duty was that of management, and of supervision, of such establishment, and that he customarily and regularly directed the work of other employees therein; that his suggestions as to hiring and firing were given particular weight, that he customarily and regularly exercises discretionery powers, and that he was compensated on a salary basis, and that therefore the provisions of the Act did not apply to him. (8)

Judgment of no cause of action was entered by the District Court upon his findings on February 20, 1946. (9)

### Judgement of Court Below

The Circuit Court of Appeals for the Sixth Circuit rendered judgment without opinion affirming the decision of the District Court. (69)

## JURISDICTIONAL STATEMENT

Jurisdiction of this Court is based on Sec. 240 of the Judicial Code, as amended. (28 U.S.C., Sec. 347)

## QUESTIONS PRESENTED

I.

Was there error, under the Administrator's definition, in finding that the primary duty of the Petitioner was management, when he had no voice in business policy or management, but worked exclusively at manual labor?

II.

Was the Petitioner's status of a laborer changed to that of an executive because the shop wherein he worked was geographically apart from the main plant of his employer?

## REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The United States Circuit Court of Appeals for the Sixth Circuit "has decided an important question of Federal law, which has not been, but should be, settled by the Supreme Court."

Supreme Court Rule 38 (5) (d)

This is the first case in which any court has held that a laborer, for whose protection the Fair Labor Standards Act was designed, performing one manual operation in a synchronized mass production, is exempt from the protection of the Act because such worker is compelled by the employer to perform his services in a location geographically separated from the main plant of the employer.

Under the Court's interpretation of sub-section (F) of the Administrator's Regulations many thousands of working foremen and working supervisors in mass production indus-

tries throughout the United States, situated similarly to petitioner, will be adversely affected and deprived of the benefits of the Act.

> WORKING FOREMEN AND WORKING SUPERVISORS
>
> "* * * Among the employees typically excluded from the exemption by such limitation are working foremen (as for example in tanneries and in press rooms or print shops), local superintendents of public utility companies, head mail clerks, head bookkeepers, terminal managers of bus and trucking companies, and file room supervisors. It will be noted that a number of these occupations involve employees who are in charge of a physically separated branch establishment or a small independent establishment."
>
> *Report and Recommendations of the Presiding Officer at Hearings Preliminary to Redefinition — p. 15. (Stein Report)*

The findings of the District Court, as affirmed by the Circuit Court of Appeals for the Sixth Circuit, is diametrically opposed to the purpose of the Act, and arbitrarily places a manual laborer in the exempt classification. Upon the basis of this decision employers are enabled to evade the Act by requiring their laboring employees to perform their respective services in numerous geographically separated small shops, thus nullifying the very purpose of the Act.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket, "No. 10285, William Chanady, Plaintiff and Appellant, v. Detroit Sheet Metal Works, a Michigan corporation, Defendant and Appellee," to the end that this cause

may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the decree of said Circuit Court of Appeals be reversed by this Court, and such further relief be granted as to this Court may seem proper.

Respectfully submitted,

WARREN E. MILLER.

Dated: Detroit, Michigan, February 25, 1947.

# BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

## OPINION OF THE COURT BELOW

The Circuit Court of Appeals for the Sixth Circuit, without opinion, entered a judgment affirming the decision of Dithe District Court for the Eastern District of Michigan, Southern Division. (69)

## JURISDICTION

The Circuit Court of Appeals in this case has decided "an important question of Federal law which has not been, but should be, decided by this Court."

*Supreme Court* 38 (5) (d)

## STATEMENT OF CASE

Reference is made to the Petition for Writ of Certiorari for a statement of the case and issues involved.

## ASSIGNMENTS OF ERROR

The Circuit Court of Appeals for the Sixth Circuit erred in affirming the finding of the District Court that the Petitioner was employed by the defendant in a "bona fide executive * * * capacity," and therefore excluded from the benefits of the Fair Labor Standards Act.

# ARGUMENT

## IMPORTANCE OF QUESTION OF FEDERAL LAW INVOLVED

We respectfully refer the Court to the Reasons Relied Upon for Allowance of Writ contained in the Petition for Writ of Certiorari.

## THE PURPOSE AND CONSTRUCTION OF THE ACT AND EXEMPTIONS THEREUNDER

The Fair Labor Standard Act is designed to protect workers who are manual laborers, as distinguished from the "white collar" or executive class of employees. Prima facie, all manual laborers are entitled to the benefits of sections 6 and 7 of the Act. Only those who are executives, as defined by the Administrator, are exempt from the benefits of the Act. The statute, being remedial with a humanitarian end in view, must be given a liberal construction, and the exemptions under the Act (section 13(a)(1)) must be given a narrow construction in order to effectuate the avowed intention of the Congress.

In *Fleming vs. Hawkeye Pearl Button Co.* 113 F. 2d 52, the Circuit Court of Appeals for the Eighth Circuit, construing the exemptions under the Act, quoted from *Heydenfeldt vs. Daney Gold Min. Co.* 93 U.S. 634, 638; 23 L. Ed. 995:

> "If a literal interpretation of any part of it (a statute) would operate unjustly, or lead to absurd results and be contrary to the evident meaning of the Act taken as a whole, it will be rejected; and there is no better way of discovering the true meaning of a law when there are expressions in it which are

rendered ambiguous by their connection with other clauses, than by considering the necessity for it, and the causes which induced the Legislature to pass it. * * *"

In the same case the Court further said:

"* * * The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon low wages and long hours of service and industry. Accepting this as the declared purpose of the Act, exemptions would tend to defeat its purpose. The statute is remedial, with a humanitarian end in view. It is therefore entitled to a liberal construction. *Grier v. Kennan*, 8 Cir. 64 F. 2d 605."

Quoting further from the same case relative to other examptions from the Act:

"Section 13 (a) (5) creates an exception to the general scope of the Act, and hence is subject to strict construction. *Thompson v. United States*, 8 Cir., 258 F. 196; *United States v. Maryland Casualty Co.* 7 Cir., 49 F. 2d 556; *United States v. Dickson*, 15 Pet. 141, 165, 10 L. Ed. 689. In the last cited case it is said: "In short, a proviso carves special exceptions only out of the evacting clause; and those who set us any such exception, must establish it as being within the words as well as within the reason thereof."

*Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52, 55, 56.

We have set forth the Administrator's Regulations on page 4 of the Petition for Writ of Certiorari. All of the conditions enumerated by the Administrator must be found to exist in the conjunctive in order to exclude an employee from the benefits of the Act.

*Helliwell v. Haberman,* 140 F. 2d. 833;

*Fanelli v. U. S. Gypsum Co.,* 141 F. 2d. 216;

*Stranger v. Glenn L. Martin Co.,* 56 Fed. Supp. 163.

The burden of showing exemption from the protection of the Act is upon the defendant.

*Stranger v. Vocafilm,* 151 F. 2d. 896;

*Ispass v. Pyramid Motor Fgt.,* 152 F. 2d. 621;

*Fletcher v. Grinnell,* 150 F. 2d. 339

Whether an employee is an executive so as to exempt him from the protection of the Act is determined from his activities, rather than from any name attributed to the position.

*Steiner v. Pleasantville Constructors,* 46 N.Y.S. 2d. 120

Concededly Sub-sections (B), (C), and (D) of Section 541.1 of the Administrator's Regulations might, in the proper setting, be equally as applicable to a craftsman, or a working foreman directing his assistants, as to an executive directing the activities of his office, or managerial, staff.

It is the Court's interpretation of Sub-sections (A) and (F) of the regulations which petitioner contends is clearly erroneous.

## THE NATURE OF PETITIONER'S WORK DID NOT EXEMPT HIM UNDER SEC. 541.1 (A)

The facts show that the Petitioner's duties, in addition to directing from two to five assistants, consisted exclusively of manual labor. He worked one hundred per cent of his time at manual labor (34). This was not rebutted (60).

If the Petitioner's primary duty was manual labor, then it could not have been management. The uncontroverted testimony shows that the Petitioner's primary duty was that of a manual laborer, and it therefore follows that the Distric Court was in error in holding, and the Circuit Court of Appeals in error in affirming, that Petitioner was an executive, as defined under Sub-section (A).

## PETITIONER WAS NOT EXEMPT UNDER SEC. 541.1 (F)

The petitioner was non-exempt (a worker) under Sub-section (F) because he worked more than 20 percent of the hours worked by non-exempt employees (his helpers) under his direction except for the proviso that Sub-section (F) "shall not apply in the case of an employee who is in sole charge of an independent establishment, or a physically separated branch establishment."

We submit that under this portion of the section the decision of the Court below, affirming the finding of the District Court, was clearly erroneous for the reason that, to exempt the Petitioner, exclusively performing manual labor, is contrary to the intention of the Congress, and for the further reason that the paint shop wherein Petitioner worked was not "an independent branch establishment."

Establishment, relative to exemptions under Sec. 13 (a) (2) of the Act, which we think is analagous and applicable, has been defined by the Circuit Court of Appeals for the Tenth Circuit, as follows:

> "* * * Establishment — — That which is established as * * * (d) the place where one is permanently fixed for residence or business; * * * an institution or place of business, with its fixtures and organized staff, as large establishments, a manufacturing estab-

lishment." Since this definition begins with the words, "That which is established," to arrive at the full meaning intended by the lexicographer we must investigate the meaning of the word 'established,' which is — — 'To make stable or firm; to fix immovably and finally. * * *' And we must look for the definition of the word "stable," which is '(1) Firmly established; * * *; solid; fixed; steadfast * * * (3) durable * * * abiding; persisting, enduring. * * *"

"It seems to us then that the words "retail * * * establishment," whatever they may not include, certainly do include a business enterprise confined to four units in a single city and one unit in another, all retail stores, all under a single management. We cannot believe that one establishment, occupying a city block is four establishments, because there is an entrance on each side of the square, four entrances. We cannot believe that one establishment is two establishments, because an alley or a street may divide one part from another. We cannot believe that one establishment is four establishments, because, for the greater convenience of customers, there are four separate locations in the same city, in each of which the same character of business is transacted, all under the guidance of a single management."

*Walling, Admr. Wage and Hour Div'n v. Fred Wolferman, Inc.*, 54 F. Supp. 917, 918.

*Appeal Dismissed* 144 F. 2d 354

The petitioner was compelled to work in a paint shop, established in a garage nine miles distant from the main plant of his employer because of the scarcity of space in the main plant. This paint shop was purely temporary, having been opened in October of 1944, and dismantled seven months later.

**The Supreme Court of Michigan has held, relative to claims for unemployment compensation occasioned by strikes, that nine essentially co-ordinating plants of the Chrysler Corporation, geographically separated within the City of Detroit, employing collectively in excess of fifty thousand men, were not separate establishments, but constituted one establishment.**

*Chrysler Corp'n v. Smith*, 297 Mich. 438.

**The Supreme Court of Wisconsin, in the same type of case, has held that one plant in Kenosha, and one in Milwaukee, forty miles apart, constituted a single establishment.**

*Spielman v. Industrial Commission*

236 *Wis.* 240 (295 N.W. 1).

## CONCLUSION

Petitioner therefore submits that the holding in this case, classifying a manual laborer as an executive, is contrary to the expressed purpose and intention of the Congress, is a violation of the spirit of the law, and is not in accord with the proper construction of the Administrator's definition, and particularly sub-sections (A) and (F) thereof, and that the Circuit Court of Appeals was in error in affirming the findings of the District Judge.

It is therefore respectfully submitted that the importance of the questions involved to the workers of the nation, and the evils attendant upon a narrow construction of the Act and a broad construction of the exemptions require a full and complete hearing by this Court and a reversal of the judgment of the Circuit Court of Appeals.

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FILED
MAR 21 1947

In The

# SUPREME COURT OF THE UNITED STATES

_____ Term, 1947

No. 1093

William Chanady,
*Petitioner,*
v.
Detroit Sheet Metal Works, A Michigan Corporation,
*Respondent.*

## ANSWER OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN OPPOSITION THERETO

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No. 1093

William Chanady,
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Detroit Sheet Metal Works, A Michigan Corporation,
*Respondent.*

## ANSWER TO PETITION FOR WRIT OF CERTIORARI

———o———

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent respectfully shows:

## *COUNTER-STATEMENT OF MATTER INVOLVED*

(Figures in parentheses refer to pages of the printed record, except as the context clearly indicates otherwise.)

The alleged "question" sought to be presented by petitioner herein was not raised either in the trial of this

case in District Court or in the briefs and records in Appellate Court. Not having been hitherto raised herein, it is obviously an afterthought, since no petition for rehearing was filed with the Appellate Court.

In comments upon the purposes of the Fair Labor Standards Act, the petitioner herein tries to indicate that this Act has more applicability to "laborers" than to other "employees." Such is not the case. The plain language of the Act is comprehensive of all employees, with no special preferences for manual laborers or any other classification of employee.

Consequently, even if it were well founded in fact, the petitioner's claim to special consideration because of "manual labor" would be without merit.

As a matter of fact, however, the petitioner was not, as he erroneously alleges in this petition, employed "exclusively at manual labor, having no voice in business policy or management. On the contrary, in his own testimony, he stated (R. 17), "I was to do the hiring and firing out in the paint shop of the employees there, and I did do it. I kept the time of the employees there, and I turned in the time cards to Detroit Sheet Metal Works each week for each one of the employees * * * and sometimes I signed the cards." Also, in response to the question (R. 18), "Now in addition to hiring and firing all of the employees at that particular plant, you likewise had, as a part of your duties, the seeing to it that the plant operated in a proper and efficient manner in that building, didn't you?", he answered, "That is right." Likewise (R. 19), in response to the next question, "And in so doing, it was necessary for you to use your own judgment and discretion as to whom to put on any particular piece of work,

and how to route the work every day to get it out, wasn't it?", he replied, "That is right." Also, in response to the next three questions (R. 18), he answered the same way, namely:

> "Q. You did exercise that judgment and discretion, didn't you?
> A. That was my business.
> Q. Yes. You managed that plant to the best of your ability, didn't you?
> A. That is right.
> Q. That was recognized as not being a part of the Detroit Sheet Metal Works in its actual plant at 1300 Oakman Boulevard (but) as a separate building or separate equipment, wasn't it?
> A. That is right."

Again (R. 20) when asked, "You used your authority to tell each of these employees what hours he should work, didn't you?", he replied, "Yes; and what he should work on."

Therefore, the recorded facts of petitioner's own testimony flatly contradict his present contention that he worked only at manual labor.

## *COUNTER-SUMMARY OF EVIDENCE*

On January 15, 1946, without previous notice or complaint to respondent, and more than eight months after termination of his employment, the petitioner filed suit (R. 2) claiming $2471.62 plus penalty damages and attorneys fees from respondent for 1014 hours of alleged overtime from October 13, 1944, through May 12, 1945. He had been hired at a flat salary of $65.00 per week to obtain a building, set up a paint shop, equip it, hire labor for it, and operate it. This he did, in a building 9 miles away from respondent's plant, and was paid on said flat salary basis during the entire time, while all other employees there were paid on an hourly basis.

As a further incident of his employment by respondent, the petitioner also was to receive one-half of the net profits from the operation by him of this paint shop; and in February of 1945, he did receive and accept $500.00 as his half of the profits for the period from October 31 to December 31, 1944 (R. 22) and receipted therefor in a writing (R. 21-22) which indicated the continuance of the same arrangement for 1945, in which year the net profits of this paint shop were $1080.00 and petitioner was tendered (R. 25-26) $540.00 as his share in December of 1945, and again in open court during the trial of this case (R. 27), but refused same.

Petitioner never turned in any time cards for himself and no arrangement was ever made between petitioner and respondent for any compensation for petitioner, other than the flat $65.00 weekly salary and one-half of the profits, and at the trial petitioner so admitted (R. 31) with the words, "That I never questioned"; and when the court

asked him, "Witness, how did you expect they were going to make up your payroll for overtime if you did not turn in time cards?" (R. 31) he replied, "Well, Your Honor, I never thought about that." Plainly, petitioner's then claim for alleged overtime was the same type of afterthought as is his present claim before this court.

Petitioner admitted (R. 34) that the burden of proving alleged overtime was upon him, and the District Judge, before whom this case was tried without a jury, found that he had failed so to prove and decided against him, upon motion made by respondent at the close of petitioner's case without any testimony whatever being offered by respondent.

## *FINDINGS OF DISTRICT COURT*

The findings of fact filed by the court (R. 7-8) were in conformity with the aforementioned testimony, and his conclusions of law followed naturally and automatically in accordance therewith. The learned judge found as a matter of fact that in August, 1944, respondent advertised for "A manager to supervise the installation and operation of a paint shop" * * * and that petitioner "answered the advertisement and was employed for such position at a salary of $65.00 per week, with an arrangement for a share in the profits * * * of the paint shop"; that petitioner obtained a building nine miles from respondent's plant, supervised and directed its installations, outfitting and equipment, operated it until the summer of 1945, and then supervised and directed its dismantling and closing. The court also found, and, again, solely on petitioner's own testimony, that he managed and supervised the operation

of the paint shop during his entire employment, "had complete charge of the shop and exercised wide discretionary powers," deciding "when, how and by whom all operations were conducted at the paint shop," organizing, directing and instructing "all other employees as to their duties and work," deciding "how many employees were to work," what duties they were to perform, and being "responsible to no one other than defendant's officers who were located at the main plant." The court also found that as to petitioner's own time that "no official records of his own time were kept or turned in to defendant"; that petitioner "decided when and the quantity and kind of supplies and equipment to requisition for the paint shop * * * interviewed prospective employees," and that particular weight was given to his suggestions as to hiring or firing and as to advancement or promotion "or any other change of status of other employees of the paint shop," which was "a physically separated branch establishment of the defendant, and plaintiff was in sole charge thereof."

The court's conclusions of law flowed naturally from these findings of fact; and, since such determination of fact was the only real question before the Appellate Court, its affirmation of District Judge Lederle merely stated "that the findings of fact of the District Judge are fully supported by the evidence," and that "his conclusions of law are correct."

## *QUESTIONS PRESENTED*

I.

Both questions presented on page 7 of plaintiff's petition are erroneous and not in accordance with the record of either the testimony or the court's findings of fact. Neither shows that petitioner "worked exclusively at manual labor," but just the opposite, as previously hereinbefore set forth. But, even if petitioner had worked exclusively at manual labor, under his compensation arrangement of a flat salary of $65.00 per week, plus half of the profits, this would be of his own choice for the purpose of increasing the profits in which he was to share.

II.

The second question falls with the first, because, since petitioner's status was not that of merely a manual laborer, nor was he compensated merely as a manual laborer. Hence, the physically separated branch establishment over which he had charge and supervision, had nothing to do with "changing" his status, because his status was set and determined before he ever opened up and started operating this paint shop, and it never changed.

III.

Therefore, the only real question now before this court is not whether the Sixth Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by the Supreme Court, because nothing of the sort was done by the Appellate Court; but the real question is whether the Supreme Court should attempt to review findings of fact herein to which the law applies automatically.

## *WHY THE WRIT SHOULD NOT BE ALLOWED*

The reasons presented on pages 7 and 8 of this petition are not in conformity with the facts of the record herein.

The Circuit Court of Appeals did not decide an important question of Federal law that should be settled by the Supreme Court. It merely decided that the findings of fact of the District Judge were "fully supported by the evidence," and that, therefore, under the undisputed facts of plaintiff's sole testimony he did not come within the provisions of the Fair Labor Standards Act.

No constitutional question is involved. Indeed, no question whatever is involved except whether or not the District Judge found the facts correctly from plaintiff's uncontradicted testimony.

Neither is it correct that "this is the first case in which any court has held that a laborer * * * is exempt from the protection of the Act * * *," because this petitioner was not found to be a "laborer," but was found to be one who was specially hired on flat salary plus half of plant profits to find and equip a building, set up a plant, operate it, hire, supervise, direct, fire employees, and manage the plant generally.

Nor does petitioner's term, "geographically separated" have any meaning. It made no diffference whether this plant was 9 miles or 9 feet from the respondent's plant. The question was as to whether it was "a physically separated branch establishment," which, again, on plaintiff's own testimony, the court so found and determined it to be.

Likewise, petitioner's references to "working foremen and working supervisors" is wholly without point or merit in this case, because they do not do what petitioner did, nor do they ever have the power so to do. If they did, they would be executives or administrators by virtue of their duties, powers and responsibilities.

Wherefore, respondent prays that this petition be denied.

Respectfully submitted,

HUMPHREYS SPRINGSTUN,
*Attorney for Respondent.*

Business Address:
1015 Majestic Building,
Detroit 26, Michigan.

In The

# SUPREME COURT OF THE UNITED STATES

———o———

_____ Term, 1947

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**No. 1093**

William Chanady,
*Petitioner,*
v.
Detroit Sheet Metal Works, A Michigan Corporation,
*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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### I.

The Circuit Court of Appeals has not decided "an important question of Federal law which has not been, but should be, decided by this court." Hence *Supreme Court 38 (5) (d)* has no applicability hereto.

## II.

The Assignment of Error herein is not correct, because the decision of the Circuit Court of Appeals was merely that the findings of fact of the District Judge sitting without a jury were "fully supported by the evidence"; and the findings of the trial judge must be accepted on appeal if supported by substantial evidence. Whether an employee is exempt under the Fair Labor Standards Act is purely a factual question, and for the jury, or the trial judge sitting without a jury, to determine. This is especially true where the evidence on the question of plaintiff's exemption as a bona fide executive employee was unequivocal. And "except in a strong case, the Supreme Court of the United States will not set aside findings of fact in which both a Federal District Court and a Circuit Court of Appeals have concurred."

*Goodyear Co. v. Ray-O-Vac Co.*, 321 U. S. 275, Syl. 1;
*D. of C. v. Pace*, 320 U. S. 698;
*Williams Mfg. Co. v. United, etc. Corp.*, 316 U. S. 364;
*Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U. S. 590 at 602, 604 and 605.

## ARGUMENT

In his argument, the petitioner again claims that he was engaged "exclusively in manual labor," and that "he worked one hundred per cent of his time at manual labor." This is not an accurate statement of the petitioner's testimony as is evidenced by the direct quotations therefrom which have been previously quoted herein. Nor do pages 34 or 60 of the record herein, as indicated by petitioner in his last paragraph on page 13, substantiate this claim. Page 60 of the record is merely colloquy between court and counsel. Page 34 of the record contains a motion by defendant's counsel "to dismiss this case because on his (plaintiff's) own admission under cross-examination it does not come within the statute"; and, also, the statement of plaintiff himself that he "looked after everything that was to be looked after for successful operation of the plant, such as keeping the materials on hand." Plaintiff was, on re-direct examination, asked the question, "How much manual labor did you do?", to which he replied, "100 per cent." But a fair interpretation of this answer at this point in the record is that plaintiff was merely affirming that whatever actual "labor" he did, as differentiated from the direction, management and supervision he did, was 100% "manual," as differentiated from skilled, semi-skilled, handicraft, scientific, clerical, artistic, technical and other forms of labor not involving as much physical effort.

Petitioner, also, for the first time, now attempts to raise a question as to the propriety of the Administrator's definitions and regulations regarding sub-sections (B),

(C) and (D) of Section 541.1, and to propose the amazing proposition that the Act was designed to protect "manual laborers" instead of "white collar" workers. Such is not the case. The Act applies to all workers, regardless of the type of work they do or the clothes they wear, and regardless of whether they do merely manual or common labor or are engaged in any of the semi-skilled or highly skilled trades or operations. There is no preference under the Act for a worker who digs with pick and shovel over a worker who makes moulds, tools, dies, sits on a bench, occasionally turns a knob or lever on a machine, or engages in highly skilled handling of technical, scientific, precision instruments.

Neither the *Chrysler case* nor the *Spielman case* are applicable hereto. They are State cases dealing with unemployment compensation claims wherein the situation is vastly different both as to workmen and establishments. Nor is there any merit in the point that the paint shop, which was leased, set up, equipped, managed, staffed and operated by the petitioner, was in operation only from October, 1944 to June of 1945. If this indicates anything at all, it indicates that it was most definitely "a physically separated branch establishment." If lack of permanence had any significance, hundreds of the plants that operated only during the war would be beyond the pale. The quotation from *Walling, Adm. v. Wolferman,* is no wise in point here.

Nor was petitioner (Petition pg. 15) "compelled" to work in a paint shop in a garage "nine miles distant from the main plant." He sought the job in answer to a newspaper advertisement for a man who could and would set up and manage and operate such a shop on a flat $65.00 per week salary plus half of the profits from the shop, so

that the accounts of which shop, therefore, had to be kept in such a fashion that the profits from this shop could be set up and determined separately from the profits of the corporation itself at its main plant.

## *CONCLUSION*

Since the decisions in this case do not classify a manual laborer as an executive; and since the decisions herein did not make any narrow construction of the Act; and since there is involved here only a question of fact, which, on petitioner's own testimony, solely, has been decided against him by a Federal District Court and concurred in by a Circuit Court of Appeals; no question of merit is presented to this Honorable Court and the Petition for Certiorari should be denied.

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